

RESPONSES TO PUBIC COMMENTS

MS. THERESE O'ROURKE, U.S. FISH AND WILDLIFE SERVICE LETTER DATED OCTOBER 12, 2004

The comments received from the U.S. Fish and Wildlife Service are indicated herein by regular font after a bolded introductory phrase identifying the page/paragraph of concern (e.g., **Paragraph 3**). For each comment, the RWQCB staff response is indicated in italicized font after the introductory phrase "***RWQCB Staff Response***" (e.g., ***RWQCB Staff Response: Comment noted.***).

Page 1, Paragraph 3: The Service does not agree that the contaminant cleanup levels for the Campbell Shipyard established in the SDRWQCB Cleanup and Abatement Order (CAO) No. 95-21 are stringent enough to guarantee long-term protection of fish and wildlife resources in San Diego Bay. There has been no comprehensive risk assessment conducted for the site, nor has there been a risk-based demonstration that the beneficial uses of San Diego Bay are being adequately protected by the proposed cap.

***RWQCB Staff Response:** We acknowledge and appreciate the concerns of the U.S. Fish and Wildlife Service regarding the cleanup levels established by CAO 95-21 and your desire for a comprehensive risk assessment/evaluation. However, the Regional Board issued CAO 95-21 (with revisions) on June 8, 1995. Both the public comment period and statutory time frame for appeal have long since expired for cleanup levels prescribed in CAO No. 95-21.*

The current agenda item (Item No. 7: tentative Order R9-2004-0295) and action under consideration by the Regional Board is to consider adoption of monitoring and waste discharge requirements for dredging of bay sediments and construction of a sediment remediation cap. The item is not intended to reopen the discussion of cleanup levels established in CAO 95-21.

Page 2, Paragraphs 2 and 3: The Monitoring and Reporting Program is essential to evaluate the efficacy of the cap because contaminated sediment will remain on-site under the cap. We commend the SD RWQCB on the details included in the Tentative Monitoring and Reporting Program No. R9-2004-0295, especially the inclusion of "action levels". This is an excellent start and we look forward to participating in the Technical Advisory Committee that will design the Long-Term Post Construction Monitoring Program as outlined in the Memorandum of Understanding between the Port, the San Diego Baykeeper, and Surfrider Foundation.

Notwithstanding the aforementioned concerns, we believe that moving forward with the project as proposed, rather than delaying it or taking the no action alternative, is preferred because it will lessen the risk the site has historically posed and currently poses to our trust resources. This decision is based on: 1) the assumption that the cap will perform as intended and effectively provide cleanup to the "action levels"; 2) "action levels" cited in

Tentative Order No. R9-2004-0295 are more protective than the levels in CAO No. 95-21; and 3) the long-term post-construction monitoring that will be required by the SDRWQCB.

RWQCB Staff Response: Comments noted.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92009



In Reply Refer To:
FWS-SDG-1239.7

OCT 12 2004

Mr. John Robertus
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

Re: Tentative Order No. R9-2004-0295 "Tentative Waste Discharge Requirements for the Port of San Diego, Campbell Shipyard Bay Sediment Cap, Closure and Maintenance, San Diego Bay, San Diego County"

Dear Mr. Robertus:

The U.S. Fish and Wildlife Service (Service) has reviewed the subject Tentative Order No. R9-2004-0295. We have previously expressed concerns regarding Campbell Shipyard sediment cleanup levels in our letter to you dated November 5, 2003, and our letter to Port of San Diego (Port) dated September 24, 2003. The proposed level of contaminants to be left in-place and capping of contaminated sediment within San Diego Bay continue to be of concern to the Service. Capping does not eliminate contaminants that are left in the aquatic environment, and over time, contaminants may become available and/or incorporated into the aquatic food chain.

Representatives from affected Federal and State natural resource trustees have been working with the San Diego Regional Water Quality Control Board (SDRWQCB) staff as part of a multi-stakeholder work group to develop a process to evaluate sediment contamination at the National Steel and Shipbuilding Company (NASSCO) and the Southwest Marine Shipyard sites. Our goal is to work with your agency to establish a risk-based approach that is acceptable to the SDRWQCB, National Oceanic and Atmospheric Administration, California Department of Fish and Game, and the Service, for determining contaminant clean-up levels at current and former shipyard sites that are protective of beneficial uses and trust resources that utilize San Diego Bay. Clean-up levels should be consistent throughout the bay, unless it can be demonstrated via risk calculations that different levels are protective of beneficial uses. The Environmental Contaminants Division of our office has been working on a risk-based screening process that will be helpful in determining whether contaminant levels in sediment pose a hazard to trust resources using the bay.

The Service does not agree that the contaminant clean-up levels for the Campbell Shipyard established in the SDRWQCB Cleanup and Abatement Order (CAO) No. 95-21 are stringent enough to guarantee long-term protection of fish and wildlife resources in San Diego Bay. There has been no comprehensive

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risk assessment conducted for the site, nor has there been a risk-based demonstration that the beneficial uses of San Diego Bay are being adequately protected by the proposed sediment cap.

The Monitoring and Reporting Program is essential to evaluate the efficacy of the cap because contaminated sediment will remain on-site under the cap. We commend the SDRWQCB on the details included in the Tentative Monitoring and Reporting Program No. R9-2004-0295, especially the inclusion of the "action levels". This is an excellent start and we look forward to participating in the Technical Advisory Committee that will design the Long-Term Post-Construction Monitoring Program as outlined in the Memorandum of Understanding between the Port, the San Diego Baykeeper, and Surfrider Foundation.

Notwithstanding the aforementioned concerns, we believe that moving forward with the project as proposed, rather than delaying it or taking the no action alternative, is preferred because it will lessen the risk the site has historically posed and currently poses to our trust resources. This decision is based on: 1) the assumption that the cap will perform as intended and effectively provide cleanup to the "action levels"; 2) "action levels" cited in Tentative Order No. R9-2004-0295 are more protective than the levels in CAO No. 95-21; and 3) the long-term post-construction monitoring that will be required by the SDRWQCB.

We appreciate the SDRWQCB's efforts to work with us toward our mutual goal of protecting and restoring San Diego Bay. Questions concerning this letter should be directed to Carolyn Lieberman at (760) 431-9440 extension 240. Specific questions regarding contaminants or clean-up levels for the Campbell site should be directed to Scott Sobiech at the same telephone number at extension 248.

Sincerely,

A handwritten signature in black ink, appearing to read "Therese O'Rourke", with a large, stylized loop at the end.

Therese O'Rourke
Assistant Field Supervisor

Attachment

cc:

SDRWQCB, San Diego, California (Attn: Tom Alo, John Odermatt)
NMFS, Long Beach, California (Attn: Bob Hoffman)
NOAA, Sacramento, California (Attn: Denise Klimas)
CDF&G, San Diego, California (Attn: Marilyn Fluharty and Bill Paznokas)
COE, San Diego, California (Attn: Josuha Burnham)
San Unified Diego Port District, San Diego, California (Attn: Eileen Maher)